

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA,

Plaintiff,

And

NATURAL RESOURCES DEFENSE
COUNCIL, INC. AND SIERRA CLUB,

Intervenor-Plaintiffs,

v.

DTE ENERGY COMPANY AND
DETROIT EDISON COMPANY,

Defendants.

Civil Action No.
2:10-cv-13101-BAF-RSW

Judge Bernard A. Friedman

Magistrate Judge R. Steven Whalen

**DEFENDANTS' REPLY IN SUPPORT OF MOTION TO COMPEL
PLAINTIFF'S COMPLIANCE WITH RULES 33 AND 34 OF THE
FEDERAL RULES OF CIVIL PROCEDURE**

DTE Energy Company and Detroit Edison Company (collectively, “Detroit Edison”) submit this Reply in Support of their Motion to Compel. The motion should be granted and Plaintiff ordered to comply with the rules.

The issue in this motion is straightforward: “Has Plaintiff complied with Rules 33 and 34?” Plaintiff, though, has focused the bulk of its opposition on why it should be *excused* from the obligation to comply with the rules. For instance, Plaintiff tries to distort Detroit Edison’s discovery instructions to claim that it can disregard Rule 34’s requirement to “produce documents as they are kept in the usual course of business.” And, while the rules nowhere allow for a “text-search” exception to Rule 34, Plaintiff insists that Detroit Edison should be satisfied with an electronically-searchable production in lieu of a production that complies with the express terms of the rule. Many courts have rejected this identical argument because text-searchability does not solve the problem of identifying and categorizing responsive documents, and the requesting party should not be forced to bear the *responding party’s* burden of reviewing its own documents and determining responsive material. *See* Dkt. 87 at 14 n.6 (citing and quoting cases).¹ Indeed, Plaintiff tries to cast blame for its own failures on Detroit Edison. Despite detailed exchanges of correspondence and multiple “meet and confers,” Plaintiff argues that Detroit Edison did not “object” to the non-compliant responses soon enough, thereby relieving Plaintiff of its obligations under Rule 34. Indeed, Plaintiff even argues that Detroit Edison somehow has lost its right to rely on Rule 34 because its outside law firm was purportedly aware of Plaintiff’s non-compliant productions years ago in other cases for other clients. None of these or Plaintiff’s other excuses justify its failure to comply with the rules here.

¹ It is ironic that Plaintiff characterizes text-searching as an easy way for Detroit Edison to identify relevant documents (Dkt. 95 at 7), while at the same time decrying the burden if *Plaintiff* is ordered to categorize responsive documents as the rules require. *Id.* at 1.

I. EPA HAS NOT PRODUCED DOCUMENTS AS KEPT IN THE USUAL COURSE OF BUSINESS.

Rule 34 was amended in 1980 to prohibit a party from producing a disorganized “document dump.”² It now allows a party to elect to produce documents “as they are kept in the usual course of business.” As noted in the Report that led to the 1980 Amendment, the everyday organization of documents reveals -- not obscures -- the business logic behind them:

To eliminate such chicanery, the Committee proposes alternative methods of production. Most members determined that the convenient and least burdensome requirement would entail production in the order in which the documents are actually kept in the usual course of business *so that there is an internal logic reflecting business use.*

Report of the Special Comm. for the Study of Discovery Abuse, Section of Litig. of the ABA (1977), published 92 F.R.D. 137, 177 (1980) (emphasis added). *See also Pass & Seymour, Inc. v. Hubbell Inc.*, 255 F.R.D. 331, 334 (N.D. N.Y. 2008) (“[c]learly, the underlying assumption ... was that production of records as kept in the usual course of business ordinarily will make their significance pellucid. That is the overarching purpose of the rule.”) (citation omitted).

Plaintiff, though, has *not* produced documents as they are kept in EPA’s “usual course of business.” Rather, they have been produced as collected and organized after-the-fact by EPA’s lawyers. This defeats the very purpose of the option to produce as kept in the usual course of business. Here, *EPA’s* logic in organizing and maintaining its documents has been lost by the lawyers’ re-organization of those documents in prior litigation and in the production to Detroit Edison. Indeed, the rule was amended to *prevent* lawyers from deciding the order and

² *See* sample CDs of Plaintiff’s production for their indecipherability (motion pending for proposed Exs. F and G to be filed in traditional manner). cursory searches reveal documents that are clearly non-responsive and irrelevant to the issues in *this* case. A search for “routine w/5 maint*” produces numerous such documents, including an IPCC Report, *Climate Change 2007: Impacts, Adaptation and Vulnerability*, a CATF report *Environmental Assessment of Geologic Storage of CO₂*, and EPA’s *Alternative Control Techniques Document: Surface Coating Operations at Shipbuilding and Ship Repair Facilities*. *See* Exs. A, B, C (excerpts). These typify the irrelevancies through which Detroit Edison must wade in search of useful information.

organization of documents to be produced. Plaintiff's own declarations belie its claim that the documents have been produced as kept by EPA in the usual course of its business.³ *See, e.g.*, Dkt. 95 Ex. 2 (multiple rounds of collection and review with expanding criteria each time); Ex. 3 ¶¶ 6-9 (confirming that, while EPA personnel organize most of their documents according to their work needs, the documents were neither collected nor produced to Detroit Edison in that manner). *See also* Dkt. 87 at 12-14 (citing cases). Moreover, providing limited information about the "origin" of the documents, whether the EPA office/region or prior litigation or in some instances a custodian,⁴ does not cure the incomprehensible organization of the production. *See id.* at 4-7. Detroit Edison is prejudiced by the document dump because Plaintiff is effectively thwarting its ability to ascertain the documents that support the defense.

A. Plaintiff Twists the Meaning of DTE's Discovery Instructions.

Plaintiff's lead argument is that it need not produce as required by Rule 34(b) because Detroit Edison's discovery instructions allegedly specified a different manner of production. This gambit cannot succeed. The entire instruction -- which Plaintiff only selectively quotes -- mirrors Rule 34(b)'s intent to prevent re-organizing documents to obscure their significance:

In producing documents, all documents that are physically attached to each other when located or segregated or separated from other documents, whether by inclusion in binders, files, sub-files, or by use of dividers, tabs, or any other method, shall be left so attached, segregated, or separated. Documents shall be retained in the order in which they are maintained, in the file where found.

Dkt. 87, Ex. D, Instr. ¶ 4. As Plaintiff's declarations confirm, its lawyers received documents with no specified organization, re-ordered them for litigation, and then produced them. *See, e.g.*, Dkt. 95 Ex. 3 ¶¶ 6-7 (describing how documents were placed into database with no instruction to

³ Plaintiff bears the burden of demonstrating that the documents were in fact produced as kept in the usual course of business. *Pass & Seymour, Inc.*, 255 F.R.D. at 334 (collecting cases).

⁴ This information was provided only after Detroit Edison filed its motion to compel.

maintain original order or organization). It is disingenuous to argue that -- *after* both the custodians and lawyers re-organized them -- the documents have been produced “in the order” in which EPA maintained them “in the file where found.” See *In re Sulfuric Acid Antitrust Litig.*, 231 F.R.D. 351, 363 (N.D. Ill. 2005) (“party must, however, show that the way in which the documents are kept has not changed from how they were kept in the usual course of business”).

B. Simply Producing Documents From Prior New Source Review Cases, With No Analysis Or Review Whatsoever, Does Not Satisfy Rule 34(b).

Plaintiff asserts that it has complied with Rule 34(b) by simply re-producing documents that it produced in other cases more than five years ago, without even attempting to limit the production to the requests or issues in this case. This argument fails. First, the hard drive of documents from 1999-2004 is simply an amalgamation of document productions in prior cases -- it is not how those documents were kept in the course of EPA’s business. Second, the issues and requests in this case obviously are not identical to issues in the prior cases against different facilities in different states.⁵ Consequently, Plaintiff has produced vast numbers of irrelevant and non-responsive documents to Detroit Edison here. As just one example, Plaintiff acknowledges producing documents related *solely* to remedy issues that Detroit Edison expressly *excluded* from its requests. Compare, e.g., Dkt. 95 Ex. 2, Attach. G at 63-64 (one of many declarations listing numerous categories of remedy-specific documents collected) to Dkt. 87 Ex. D, Req. 3 (“...*excluding* any documents or information collected in connection with remedy discovery in any NSR enforcement action”) (emphasis added). In fact, Plaintiff’s declaration states that the hard drive contains “potentially-responsive” documents. Dkt. 95 Ex. 3 ¶12. This

⁵ Plaintiff neither attaches the discovery requests from the other cases nor provides a comparison to Detroit Edison’s requests. Review of the requests reveals what one would expect. Like Detroit Edison here, the defendants were seeking much more than general EPA documents - they were seeking documents *specific* to their facilities, projects, and state regulations. See, e.g., Exs. D, E (discovery requests in *Duke Energy* and *Illinois Power*). Many, if not most, of those case-specific documents are non-responsive to Detroit Edison’s requests, but they have been produced in Plaintiff’s document dump, obscuring those relevant to Monroe 2.

sworn statement contradicts Plaintiff's opposition. *See* Dkt. 95 at 14-15 (admitting that producing "potentially responsive" documents is improper, but claiming that production in this case is not merely "potentially responsive" documents). As other courts have held, a requesting party is entitled to responsive documents, not a vast universe of potentially-responsive documents. Providing the EPA location where the documents originated, as Plaintiff has now done, does nothing to eliminate the prejudice from receiving voluminous non-responsive documents.

II. EPA HAS FAILED TO COMPLY WITH FEDERAL RULE 33(d).

Plaintiff relied on Rule 33(d) in many of its answers to interrogatories, and yet has not complied with the *express* requirement to identify documents with specificity. Plaintiff's opposition does nothing to justify its refusal to provide the required information, nor does it even respond to the specific deficiencies noted by Detroit Edison. *See* Dkt. 87 at 15.

CONCLUSION

For the reasons here and in its Opening Brief, Detroit Edison's motion should be granted.

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I hereby certify that on April 29, 2011, the foregoing **DEFENDANTS' REPLY IN SUPPORT OF MOTION TO COMPEL PLAINTIFF'S COMPLIANCE WITH RULES 33 AND 34 OF THE FEDERAL RULES OF CIVIL PROCEDURE** was served electronically only on the following attorneys of record in accordance with an agreement reached among the parties:

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**APPENDIX A:
INDEX OF EXHIBITS**

- Ex. A IPCC Report, *Climate Change 2007: Impacts, Adaptation and Vulnerability*
- Ex. B CATF Report, *Environmental Assessment of Geologic Storage of CO₂*
- Ex. C *Alternative Control Techniques Document: Surface Coating Operations at Shipbuilding and Ship Repair Facilities* (EPA)
- Ex. D Defendant's First Set of Requests for Production of Documents to the United States of America, *United States of America v. Duke Energy*, Civil Action No. 1:00 CV 1262

- Ex. E Plaintiff United States' Responses and Objections to Defendant Illinois Power Company's First Request for Production of Document, *United States of America v. Illinois Power Company*, Civil Action No. 99-813-DRH
- Ex. F Sample CD from Plaintiff's production (to be filed in traditional manner if motion to do so is granted)
- Ex. G Sample CD from Plaintiff's production (to be filed in traditional manner if motion to do so is granted)

EXHIBIT A
TO REPLY BRIEF IN SUPPORT
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Together with:	Supporting material, Chapter supplementary material, Regional and subject database of references, Figures in Powerpoint from SPM and TS

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EXHIBIT B
TO REPLY BRIEF IN SUPPORT
OF DEFENDANTS' MOTION TO
COMPEL PLAINTIFF'S
COMPLIANCE WITH RULES
33 AND 34 OF THE FEDERAL
RULES OF CIVIL PROCEDURE

*Environmental
Assessment of
Geologic Storage
of CO₂*

December 2003

MIT LFEE 2003-002

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EXHIBIT C
TO REPLY BRIEF IN
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PLAINTIFF'S COMPLIANCE
WITH RULES
33 AND 34 OF THE
FEDERAL RULES OF CIVIL
PROCEDURE

United States
Environmental Protection
Agency

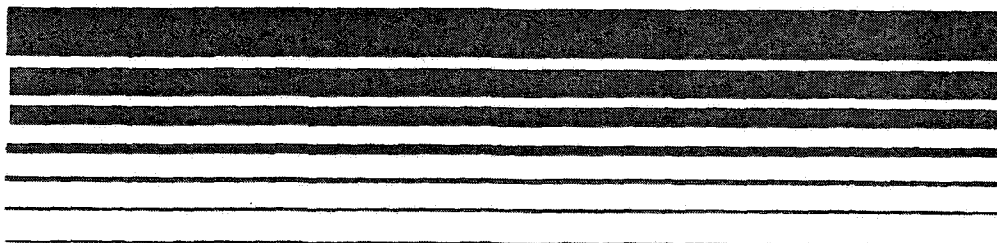
Office of Air Quality
Planning and Standards
Research Triangle Park NC 27711

EPA 453/R-94-032
April 1994

Air



Alternative Control Techniques Document: Surface Coating Operations at Shipbuilding and Ship Repair Facilities



ACT

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015-2626

NOTICE

There are no planned changes to this document. However, corrections or updates sometimes become necessary. Submission of a copy of the form below will insure you receive any supplement or change to this report that is published in the next twelve months. Comments may be sent to the same address.

TO: Emission Standards Division
MD-13
U.S. Environmental Protection Agency
Research Triangle Park, NC 27711

Attention: Dr. Serageldin

Please forward any supplement or change to EPA Report Number EPA/450/R-94-032, "Alternative Control Techniques Document: Surface Coatings Operations at Shipbuilding and Ship Repair Facilities" to the address below.

U.S. Environmental Protection Agency
Region 5, EPA-506 (2J)
77 West Jackson Boulevard, 12th Floor
Chicago, IL 60604-3590

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EPAHQ_DTE1RFP039425

EXHIBIT D
TO REPLY BRIEF IN
SUPPORT OF DEFENDANTS'
MOTION TO COMPEL
PLAINTIFF'S COMPLIANCE
WITH RULES
33 AND 34 OF THE
FEDERAL RULES OF CIVIL
PROCEDURE

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DUKE ENERGY CORPORATION,

Defendant.

Civil Action No. 1:00 CV 1262

**DEFENDANT'S FIRST SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS TO THE UNITED STATES OF AMERICA**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Duke Energy Corporation ("Duke") hereby requests that Plaintiff United States of America ("Plaintiff") produce for inspection and copying the documents described below within thirty (30) days at the headquarters of the Environmental Protection Agency, Ariel Rios, 1200 Pennsylvania Avenue, N.W., Washington, D.C. or some other agreed on location.

INSTRUCTIONS

A. Plaintiff is required to produce all documents responsive to the requests set forth below that are in its possession, custody, or control, including documents in the possession, custody, or control of Plaintiff's departments, agencies, offices, officers, employees, or agents (including attorneys, engineers, accountants, consultants, or experts).

B. In the event any copy of any document, the production of which is requested, is not identical to any copy thereof by reason of any alterations, marginal notes, comments, or other

materials contained therein or attached thereto, or otherwise, all such non-identical copies shall be produced separately.

C. The singular shall be construed to include the plural, and the plural shall be construed to include the singular. The words "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the specific request all documents that might otherwise be construed to be outside of its scope. The words "all" and "each" shall be construed as all and each.

D. In producing documents, all documents that are physically attached to each other when located or segregated or separated from other documents, whether by inclusion in binders, files, subfiles, or by use of dividers, tabs, or any other method, shall be left so attached, segregated, or separated. Documents shall be retained in the order in which they are maintained, in the file where found.

E. If any document or any portion of any document requested herein is not produced, describe the basis for withholding the document or portion thereof, including any claim of privilege, in sufficient detail to permit the court to decide the validity of your withholding of the document. As required under Rule 26(b)(5) of the Federal Rules of Civil Procedure, please produce a log that identifies each document withheld and, in addition, provides at a minimum the following information:

- (a) the place, date, and manner of preparation or other recording of the document;
- (b) the title and subject matter of the document;

(c) the identity and position of the author, the addressee, and all recipients of the document; and

(d) a statement of (i) the nature of the legal privilege claimed or other reason for withholding the document and (ii) the factual basis for that claim of privilege or other reason for withholding, including the facts establishing any claim of privilege, the facts showing that the privilege has not been waived, the status of the person claiming the privilege, and a statement as to whether the contents of the document are limited to legal advice or contain other subject matter.

F. Identify and produce each portion of any document withheld in part pursuant to instruction E as to which the basis for withholding other portions of the document does not apply.

G. These requests are continuing in nature. If additional information or documents become known regarding any of these requests, you are to furnish a supplemental response when such information or documents becomes available.

DEFINITIONS

1. The term "documents" includes originals, non-identical copies and drafts, whether printed or reproduced by hand or otherwise, and includes, but is not limited to, correspondence, letters, memoranda, notes, inter- or intra-office, agency, or departmental communications, records, permits, summaries of personal or telephone conversations or interviews, minutes or records of meetings or conferences (including meetings of boards, committee, sub-committee, or any individual member thereof), press releases, contracts, agreements, purchase orders, invoices,

confirmations, telegrams, telexes, books, preliminary and final reports, logs, diaries, audio recordings, video recordings, charts, photographs, notebooks, calendars, statistical statements, tables, tabulations, calculations, data, diagrams, plans, drawings, blueprints, orders, work orders, and opinions or reports of consultants, experts, attorneys, engineers, accountants, or analysts.

2. "Communication" or "communications" refers to any and all of the following: any documents, writings, notes, oral conversations, conversations or discussions by telephone or other exchange of information in any form (and any notes or recordations of them).

3. "Concern" or "concerning," "relate to" or "relating to," or "refer to" or "referring to" means any document which mentions, reflects, directs attention to the matter or is in any way connected with the matter.

4. "Plaintiff" means Plaintiff United States of America, acting by authority of the Attorney General of the United States and includes the Administrator and the United States Environmental Protection Agency ("USEPA"), including its present and former officers, administrators, managers, directors, employees, agents, attorneys (including, but not limited to, the Attorney General of the United States and the U.S. Department of Justice), and affiliates, and all other persons acting or purporting to act on its behalf, as well as all other federal agencies or instrumentalities that own, operate, or are responsible for the installation, operation, or regulation of fossil fuel-fired boilers, including, but not limited to, the Department of Defense, the Federal Bureau of Prisons, the Department of Energy, the Federal Energy Regulatory Commission, and any other federal agency with the exception of the Tennessee Valley Authority.

5. "USEPA" means the United States Environmental Protection Agency (including the Administrator of the United States Environmental Protection Agency), its headquarters, offices, regions, departments, agencies, and its present and former officers, administrators, managers, directors, employees, agents, attorneys, and affiliates, and all other persons acting or purporting to act on its behalf.

6. Any references to "you," or "your" means Plaintiff United States of America.

7. "Plant" or "Plants" mean the fossil fuel-fired electric generating stations named in the Complaint filed in United States District Court, Middle District of North Carolina, Case No. 1:00 CV 1262, including the CG Allen, Belews Creek, Buck, Marshall, Cliffside, Dan River, W.S. Lee, and Riverbend Plants.

8. "CAA" or the "Act" means the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, and all rules and regulations promulgated thereunder.

9. "PSD" means the requirements set forth in Part C of Title 1 of the CAA, 42 U.S.C. §§ 7470-7492, for the prevention of significant deterioration of air quality in those areas designated as attaining National Ambient Air Quality Standards ("NAAQS") ,and all rules and regulations related to PSD.

10. "NSPS" means the New Source Performance Standards promulgated by the USEPA pursuant to Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), and all rules and regulations related to NSPS, including those set forth at 40 C.F.R. part 60, subpart A, §§ 60.1 - 60.19.

11. "NSR" means the non-attainment new source review regulatory programs authorized under Part D of Title I of the CAA for new and modified stationary sources located in areas that are designated as not having attained the NAAQS, 42 U.S.C. §§ 7501-7515, and the regulations promulgated thereunder.

12. "SIP" means the state implementation plan adopted pursuant to Section 110 of the CAA, 42 U.S.C. § 7410, by any State in which one of the Plants is located, and which has been submitted to and/or approved by USEPA as set forth in 40 CFR Part 52.

13. "CAA Modification Rules" means all NSPS, PSD, NSR, and SIP program rules, including all proposed versions of those rules from 1970 to the present, including, but not limited to, rules and regulations set forth in Title 40 of the Federal Code of Regulations, that define the term "modification" and/or "major modification" and detail the applicability of and substantive requirements for new and/or modified sources of air emissions for purposes of the PSD, NSR, and/or SIP preconstruction permitting programs and/or the NSPS program rules, like those found in, *e.g.*, 40 CFR §§ 51.165, 51.166, 52.21, 52.24, 60.2, and 60.14, and all previous versions of those rules, and any submitted and/or approved SIP program rules containing major new source review and/or general or minor new source review provisions.

14. Any references to "WEPCo" means the U.S. Court of Appeals for the Seventh Circuit's decision in Wisconsin Elec. Power Co. v. Reilly, 893 F.2d 901 (7th Cir. 1990).

15. "WEPCo rule" means those amendments to the NSR rules in 1992 which followed the decision in WEPCo, 57 Fed. Reg. 32,314 (July 21, 1992).

DOCUMENT REQUESTS

1. Any and all documents that concern, relate to, or on which you base any allegation in the Complaint that Duke constructed any unit at the Plants in violation of the CAA.

2. All documents that concern, relate to, refer to, or upon which you base your allegations that Duke violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a) and the PSD regulations set forth in 40 C.F.R. § 52.21 by, among other things, undertaking such major modifications and continuing to operate the Plants without obtaining a PSD permit as required by 40 C.F.R. §§ 52.21(i)(1) and 52.21(r)(1).

3. For each project or change at the Plants which you allege to be a "modification," produce all documents that describe facts, decisional criteria, and analysis made by, or on behalf of, USEPA with respect to:

(a) the determination that the project or change was not routine maintenance, repair or replacement for purposes of the CAA Modification Rules;

(b) the determination that the project or change was not a "pollution control project" for the purposes of 40 C.F.R. § 51.165 or 40 C.F.R. § 52.21(b) (32);

(c) the determination that the project or change did not constitute the use of an alternative fuel or raw material within the meaning of the CAA Modification Rules;

(d) the maximum emission rate and the kilogram per hour of each pollutant, both before and after the project or change, relevant to the CAA definition of "modification" or "major modification" in the CAA Modification Rules;

(e) the "actual emissions," as defined under 40 C.F.R. § 52.21(b) (21), before and after the project or change;

(f) the "potential to emit," as defined under 40 C.F.R. § 52.21(b) (4), before and after the project or change;

(g) the "source-specific allowable emissions" before and after the project or change;

(h) the maximum hourly and annual emissions and the emissions limit legally and physically achievable before and after the project or change;

(i) the difference in "actual emissions" before and after the project or change, assuming the unit is operated under the same hours and conditions that existed before the project or change;

(j) the actual emissions during the selected time period for the allegations in the Complaint using the unit's actual operating hours, production rates, and type of materials processed, stored, or combusted during the selected time period;

(k) the "net emissions increase" attributed to the project or change;

(l) the causal relationship between the particular project or change and any significant net increase in emissions.

4. All documents describing, referring or relating in any way to your methods of calculating or determining whether a "net emissions increase" has occurred under federal and state regulations.

5. All documents discussing, describing, referring to or relating to EPA's Notice of Violation issued to Duke on May 9, 2000.

6. All documents discussing, describing, referring to or relating to EPA's Request for Information served on Duke on October 1, 1999 pursuant to Section 114 of the Clean Air Act.

7. All documents describing, discussing, regarding or related in any way to the emissions calculations upon which EPA based (a) the Notice of Violation served on Duke; and (b) the allegations in its Complaint.

8. All documents containing the emissions calculations related to the Plant projects in this Complaint.

9. All documents discussing, describing, referring to or relating to whether the Plant projects at issue in this case constituted routine maintenance.

10. All documents discussing, describing, referring to or relating to whether the Plant projects at issue in this case constituted routine repair.

11. All documents discussing, describing, referring to or relating to whether the Plant projects at issue in this case constituted routine replacement.

12. All documents, including reports, correspondence, letters, e-mails, memoranda, or notes, concerning or relating to any USEPA inspection of the Plants at any time from January 1, 1978, to the present.

13. All documents that concern, relate to, or refer to any civil actions by you against electric utility companies operating coal-fired electricity generating power plants and alleging violations of the NSR provisions of the CAA.

14. All documents that concern, relate to, refer to, or upon which you base your allegations in the Complaint that Duke violated and continues to violate provisions of the applicable SIP permitting provisions.

15. All documents prepared by or for or submitted to Plaintiff that concern, relate to, or refer to climate conditions, economic conditions, fuel changes, the operating status at other electric utility plants, changes at interconnected facilities, or other factors that affect air emissions from the electric utility sector, including any of the Plants named or referred to in the Complaint during any period from 1970 to the present, including, but not limited to, environmental impact analyses, permitting files, utility industry sector reports, acid rain program studies, studies or analyses of any legislative or regulatory proposals, and any other documents.

16. All documents that concern, relate to, or refer to any inspection of or visit of any kind to a facility at which is located a fossil fuel-fired boiler of any kind, including, but not

limited to, any utility, industrial, commercial, or institutional boiler used to generate electricity, process stream, or heat, by you or any other governmental agency with authority to enforce any provision of the Act, including but not limited to any visit or inspection conducted by USEPA, its representatives, agents, or contractors, or any authorized state or local air pollution control agency and its representatives, agents, or contractors, at any time from January 1, 1970 to the present.

17. All documents discussing, describing, referring or relating to EPA's allegations that the projects or changes referenced in the Complaint are "modifications."

18. All documents discussing, describing, referring or relating to the applicable PSD regulations in effect during the time periods when the alleged "modifications" occurred, as alleged in the Complaint.

19. All documents regarding inspection procedures and standards for coal-fired steam electricity generation plants.

20. All documents that concern, relate to, refer to, were produced during, were generated during, or were secured during any investigation by you of the claims set forth in the Complaint, including any unspecified "additional major modifications" as referenced, for example, in paragraphs 32, 41, 51, 60 and 69 of the Complaint.

21. All communications between you and any State, including but not limited to any state governors, attorneys general, or environmental agencies, concerning in any way air emissions from facilities allegedly owned, operated, or controlled by Duke, and any other documents that refer or relate to such communications.

22. All communications between you and any private entity or organization or group concerning this or any other enforcement actions commenced against an electric utility, a federal agency or instrumentality owning or operating electric generating plants, or any other public or private entity, which enforcement action is based, in whole or in part, on any alleged "modifications" to fossil-fuel fired boilers.

23. All documents that concern, relate to, or refer to any interpretation by you of Section 169(2)(C) of the CAA, 42 U.S.C. § 7479(2)(C), with respect to the term "construction," and including the term "modification" (as defined in Section 111(a) of the CAA, 42 U.S.C. §7411(a).

24. All documents regarding the applicable PSD regulations in effect during the time periods when the alleged "modifications" occurred as alleged in the Complaint.

25. The complete rulemaking record (within the meaning of 42 U.S.C. § 7607(d)(7)(A)) for the CAA Modification Rules, including all rules and regulations comprising

the CAA Modification Rules, and all previous versions of those rules and regulations since the enactment of the Clean Air Act.

26. All documents that concern, relate to, or refer to any determination that an activity does or does not constitute "routine maintenance, repair and replacement," and the application of that term, under the CAA Modification Rules.

27. All communications from EPA Headquarters to EPA Regions or State or local air pollution control agencies regarding the CAA Modification Rules.

28. All documents that concern, relate to, or refer to state or federal energy laws, industry codes, standards or practices, or economic studies that influence, affect, or assist in understanding the maintenance, repair and replacement practices within the electric utility industry and/or the application the CAA Modification Rules.

29. All documents, including but not limited to studies, analyses, position papers, or discussion papers, that concern, relate to, or refer to what the EPA considers to be "routine maintenance, repair or replacement" activities in the electric utility industry.

30. All documents that concern, relate to, or refer to what you consider to be, for purposes of the CAA Modification Rules, "an increase in the hours of operation or in the rate of production" that is not "prohibited under any federally enforceable permit condition established

after January 6, 1975, pursuant to 40 CFR 52.21, or under regulations approved pursuant to 40 C.F.R. subpart I or 40 CFR 51.166.”

31. All documents that concern, relate to, or refer to any interpretation by you of NSPS regulations, 40 C.F.R. Part 60, subpart A, §§ 60.1 - 60.19, with respect to electric utility companies operating fossil fuel-fired electricity generating plants and “modification” of such plants under NSPS.

32. All documents that concern, relate to, refer to, or identify any permits issued for “major modifications” to any fossil fuel-fired boiler, or any permit issued for a physical or operational change to such a boiler that was not a “major modification” because the source “netted out” of PSD or NSR permitting requirements or accepted practically enforceable emission limitations to avoid PSD or NSR requirements.

33. All documents describing, regarding, referring or relating in any way to preconstruction permits and/or operating permits applied for and/or received by the Plants.

34. All documents describing, regarding, referring or related in any way to EPA and state investigations/inspections of the Plants.

35. All documents that concern, relate to, or refer to the comparison of pre-change and post-change emissions associated with any “major modification” at a fossil fuel-fired boiler,

including any projections or reports of post-change "representative actual annual emissions" for an electric steam generating unit, as that term is used in the CAA Modification Rules.

36. All documents that concern, refer to, relate to, or contain any communications concerning the CAA Modification Rules, the electric utility sector, or air emissions associated with the generation of electric energy, between USEPA and the Federal Energy Regulatory Commission, the Energy Information Administration, the Department of Energy, or any member or committee of the Congress of the United States, from 1980 to the present.

37. All documents that concern, relate to, or refer to any applicability determination made by USEPA under 40 CFR § 60.5 from 1971 to the present, including, but not limited to, those determinations made for Fossil Fuel Fired Steam Generators, Electric Utility Steam Generating Units, Industrial-Commercial-institutional Steam Generating Units, and Stationary Gas Turbines, as described in the NSPS.

38. All documents that concern, relate to, or refer to any ability to administer, implement, or enforce PSD, the NSR Programs, and the CAA Modification Rules by any State in which any of the Plants are located, including, but not limited to, any SIP approvals, delegation letters, grant agreements, correspondence, permits, comments, or rulemaking activities involving PSD, the NSR Programs and the CAA Modification Rules or facilities affected by these programs or rules.

39. All documents that discuss, describe, or refer to EPA oversight of North Carolina's and South Carolina's implementation of the PSD and NSR program.

40. All documents that concern, relate to, or refer to EPA's consideration, implementation, or application of the WEPCo decision to the NSR Programs, including but not limited to:

(a) cost estimates for replacements in investment per kilowatt as a measure in determining the application of NSR;

(b) repair and replacement activities that are routine in the electric utility industry; and

(c) USEPA statements made after the WEPCo decision concerning the nature of the replacements at issue in WEPCo.

40. All documents that concern, relate to, or refer to EPA "working guidance" as described in the preamble to the final WEPCo rule, 57 Fed. Reg. 32,314 (July 21, 1992).

41. All documents prepared by EPA that concern, relate to, or refer to Congress's consideration of the CAA Modification Rules or WEPCo in connection with the 1990 Clean Air Act Amendments.

42. All documents referring to, describing, or analyzing USEPA decisions, interpretations, or statements regarding the scope of the WEPCo rule, including any proposals for revising or modifying this rule, including but not limited to the following:

(a) Any proposals ever considered, discussed, or analyzed by USEPA, whether or not made available to any third party, to amend the CAA § 165, 42 U.S.C. § 7475, or implementing regulations to define, clarify, or modify any of the WEPCo rule as it relates to the NSR Programs;

(b) Any final, proposed, or draft guidance documents that refer to, describe, analyze, or otherwise discuss the meaning or interpretation of the WEPCo rule as it relates to the NSR Programs;

(c) Any correspondence sent by USEPA or any of its agents to any outside entity that refers to, describe, analyze, or otherwise discuss the meaning, interpretation, or application of the WEPCo rule as it relates to the NSR Programs;

(d) Any intra-agency memoranda, letters, e-mails or other correspondence that refer to, describe, analyze, or otherwise discuss the meaning or interpretation of the WEPCo rule as it relates to the NSR Programs at any particular site or project;

(e) Any written legal analyses, interpretations, interpretative rulings or opinions in the possession of USEPA that refer to, describe, analyze, or otherwise discuss the meaning or interpretation of the above terms as they relate to the NSR Programs;

(f) Any written or unwritten enforcement policies that refer to, describe, analyze, or otherwise discuss the meaning or interpretation of the WEPCo rule as it relates to the NSR Programs;

(g) Any final, proposed, or draft penalty assessments, whether issued or not, that rely in whole or part on the meaning or interpretation of the WEPCo rule as it relates to the NSR Programs;

(h) Any final, proposed, or draft Notices of Violation, whether issued or not, that rely in whole or part on the meaning or interpretation of the WEPCo rule as it relates to the NSR Programs;

(i) Any final, proposed, or draft settlement documents or consent decrees, whether issued or not, that rely in whole or part on the meaning or interpretation of the WEPCo rules as it relates to the NSR Programs;

(j) Any and all written materials prepared with or relied on in the development, production, drafting, or issuance of any of the above documents.

43. All documents referring to, describing or analyzing state decisions, interpretations, or statements regarding the scope of the WEPCo rule, including those documents which would fall under any of the subcategories listed in the preceding request.

44. All documents in USEPA's possession discussing, explaining, or analyzing the relationship between the federal regulations implementing the NSR Programs and applicable

North Carolina and South Carolina regulations, including North and South Carolina's application of the WEPCo rule.

45. All documents not already identified above referring to, describing or relating to any communications between USEPA and any state or state agency regarding the scope of the WEPCo rule.

46. All documents that concern, relate to, or refer to any requirements that electric utilities must maintain their facilities under state and federal laws, including duties imposed by a state public utility commission ("PUC") on electric utilities that requires electric utilities to make improvements and repairs needed to ensure continuous and reliable service to customers.

47. All documents that EPA contends provided fair notice to Duke of EPA's interpretation of the CAA regulations as advanced in this enforcement proceeding.

48. All correspondence, memoranda, notes, reports, directives, or other communications between EPA and Duke and/or any state in which a Plant is located regarding the facts underlying this action.

49. All documents regarding the Plants, the steam or electricity generating capacity of the Plants and/or any of their components.

50. All documents supporting EPA's allegations that the projects referenced in the Complaint resulted in significant net emissions increases in regulated pollutants.

51. All documents regarding emissions from the Plants and the alleged environmental impact of those emissions.

52. All documents regarding computer modeling or other studies, reports, or documents that evaluate or estimate emissions from the Plants.

53. All documents describing EPA's application of PSD, the NSR Programs, and the CAA Modification Rules to electric utilities in all 10 EPA regions.

54. All documents regarding EPA regulation of the electric utility industry other than with respect to enforcement of the Clean Air Act.

55. All documents regarding EPA's application of the NSR/PSD rules to industries other than coal-fired steam electricity generators.

56. All documents showing the historic treatment and interpretation of provisions and terms in the CAA and associated regulations by the EPA, other federal agencies and the States of North Carolina and South Carolina, to include whether the USEPA considered a "modification" to encompass the repair, replacement and upgrading by electric utility of the component parts of

the generating systems, including those activities necessary to ensure the reliable, efficient and safe generation of power and to preserve the economic viability of their facilities.

57. All documents regarding EPA-contracted studies, reports and modeling pertaining to coal-fired steam electricity generating plants.

58. All documents that concern, relate to, or refer to any correspondence with any members of Congress concerning the CAA Modification Rules or otherwise relating to the subject matter of this action in any way.

59. All documents that concern, relate to, or refer to any testimony by anyone affiliated with or on behalf USEPA concerning the CAA Modification Rules or otherwise relating to the subject matter of this action in any way.

60. All documents that concern, relate to, or refer to any speeches or other public pronouncements by or on behalf USEPA concerning the CAA Modification Rules or otherwise relating to the subject matter of this action in any way.

61. All documents that describe the criteria USEPA uses, if any, to determine whether a "physical change or change in the method of operation" does or does not include "an increase in the hours of operation or in the rate of production" that is not prohibited under any federally

enforceable permit condition which was established after January 1, 1975, pursuant to 40 C.F.R. § 52.21 or under regulations approved pursuant to 40 C.F.R. subpart I or 40 C.F.R. § 51.166.

62. All documents describing or referring to USEPA's interpretation of the terms "construction," "modification," "physical change," "reconstruction," "life extension," "routine," "maintenance," "repair," or "replacement," or any phrase containing one or more of these terms as these terms relate to the NSR Programs, including but not limited to the following:

(a) Any proposals ever considered, discussed, or analyzed by USEPA, whether or not made available to any third party, to amend the CAA or implementing regulations to define, clarify, or modify any of the above terms as they relate to the NSR Programs;

(b) Any final, proposed, or draft guidance documents that refer to, describe, analyze or otherwise discuss the meaning or interpretation of the above terms as they relate to the NSR Programs;

(c) Any correspondence sent by USEPA or any of its agents to any outside entity that refers to, describes, analyzes, or otherwise discusses the meaning, interpretation, or application of the above terms as they relate to the NSR Programs;

(d) Any intra-agency memoranda, letters, e-mails or other correspondence that refer to, describe, analyze, mention or otherwise discuss the meaning or interpretation of the above terms as they relate to the NSR Programs at any particular site or project;

(e) Any written legal analyses, interpretations, interpretive rulings or opinions in the possession of USEPA that refer to, describe, analyze, mention or otherwise discuss the meaning or interpretation of the above terms as they relate to the NSR Programs;

(f) Any written or unwritten enforcement policies that refer to, describe, analyze, mention or otherwise discuss the meaning or interpretation of the above terms as they relate to the NSR Programs;

(g) Any final, proposed, or draft penalty assessments, whether issued or not, that rely in whole or part on the meaning or interpretation of the above terms as they relate to the NSR Programs;

(h) Any final, proposed, or draft Notices of Violation, whether issued or not, that rely in whole or part on the meaning or interpretation of the above terms as they relate to the NSR Programs;

(i) Any final, proposed, or draft settlement documents or consent decrees, whether issued or not, that rely in whole or part on the meaning or interpretation of the above terms as they relate to the NSR Programs;

(j) Any and all written materials prepared with or relied on in the development, production, drafting, or issuance of any of the above documents requested in this request or its subparts.

64. All documents referring to, describing, or analyzing the issue of what constitutes a "continuing violation" under the NSR Programs, or any other provision of the CAA, including but not limited to the following:

(a) Any proposals ever considered, discussed, or analyzed by USEPA, whether or not made available to any third party, to amend the CAA or implementing regulations to define, clarify, or modify any of the above term as it relates to the NSR Programs;

(b) Any final, proposed, or draft guidance documents that refer to, describe, analyze, mention or otherwise discuss the meaning or interpretation of the above term as it relates to the NSR Programs;

(c) Any correspondence sent by USEPA or any of its agents to any outside entity that refers to, describes, analyzes, mentions or otherwise discusses the meaning, interpretation, or application of the above term as it relates to the NSR Programs;

(d) Any intra-agency memoranda, letters, e-mails or other correspondence that refer to, describe, analyze, mention or otherwise discuss the meaning or interpretation of the above term as it relates to the NSR Programs at any particular site or project;

(e) Any written legal analyzes, interpretations, interpretive rulings or opinions in the possession of USEPA that refers to, describe, analyze, mention or otherwise discuss the meaning or interpretation of the above term as it relates to the NSR Programs;

(f) Any written or unwritten enforcement policies that refer to, describe, analyze, mention or otherwise discuss the meaning or interpretation of the above term as it relates to the NSR Programs;

(g) Any final, proposed, or draft penalty assessments, whether issued or not, that rely in whole or part on the meaning or interpretation of the above term as it relates to the NSR Programs;

(h) Any final, proposed, or draft Notices of Violation, whether issued or not, that rely in whole or part on the meaning or interpretation of the above term as it relates to the NSR Programs;

(i) Any final, proposed, or draft settlement documents or consent decrees, whether issued or not, that rely in whole or part on the meaning or interpretation of the above term as it relates to the NSR Programs;

(j) Any and all written materials prepared with or relied on in the development, production, drafting, or issuance of any of the above documents requested in this request or its subparts.

65. All documents that concern, relate to, or refer to what you believe constitutes "routine maintenance, repair and replacement" under the CAA Modification Rules.

66. All documents that concern, relate to, or refer to any statement by USEPA, including any USEPA offices, concerning the application of the term "routine maintenance, repair and replacement" under the CAA Modification Rules.

67. All documents that concern, relate to, or refer to what you believe constitutes "routine" maintenance, including whether the term encompasses those maintenance practices that are customary within the industry to preserve efficient and reliable generation.

68. All documents that concern, relate to, or refer to any USEPA statements that maintenance practices or activities by electric utilities constitute a "modification" within the meaning of the CAA Modification Rules.

69. All documents that concern, relate to, or refer to any revised or new approach by USEPA in considering whether maintenance and repair constitutes a "modification" within the meaning of the CAA Modification Rules, and whether USEPA considered affording an opportunity for public comment on this revised or new approach.

70. All documents prepared or dated at any time since 1971 that identify criteria to be applied to the USEPA's determination differentiating maintenance, repair, or replacement that is "routine" from that which is "non routine" for purposes of the CAA Modification Rules.

71. All documents that concern, relate to, or refer to USEPA's regulatory discussions of the CAA Modification Rules, including any indications in those discussions that USEPA does not intend to discourage physical or operational changes that increases efficiency or reliability, or that improve the operating characteristics of a unit.

72. All documents that concern, relate to, or refer to analyses or statements by USEPA or otherwise upon whom USEPA relies concerning useful lifetimes of electric generating stations.

73. All documents that concern, relate to, or refer to maintenance activities that allow utilities to achieve the standard operating lifetimes assumed by USEPA, including industrial codes and standards, and including the repair and replacement of tubing, economizers, reheaters,

superheaters, steam drums, pulverizers, coal nozzles and pipes, turbine blades, and other equipment.

74. All documents that concern, relate to, or refer to practices within the electric utility industry regarding replacements and consideration of the availability of state-of-the-art improvements in component design, including the incorporation of upgraded components where feasible.

75. All documents that concern, relate to, or refer to state or federal energy laws, industry codes, standards or practices, or economic studies that define what constitutes "routine maintenance, repair and replacement" for the electric utility industry and any application thereof as a guide in the proper application of the CAA Modification Rules.

76. All documents that concern, relate to, or refer to whether application of NSR to repair and replacement activities will adversely impact the ability of electric utilities to provide an adequate and reliable supply of power and consequences for public health and welfare or for the safety of utility workers.

77. To the extent not otherwise produced, all documents regarding EPA guidance on the interpretation and enforcement of applicable federal and state law, including, but not limited to PSD, NSR, NSPS regulations, state implementation plans and federal and state operating permit programs.

78. All guidance documents, interpretations, applicability evaluations/determinations, and enforcement documents by EPA and/or EPA contractors regarding the development, implementation, and enforcement of the relevant federal and state programs and regulations.

79. All documents discussing, describing, referring to or relating to the meaning of the following terms in federal and corresponding state regulations: (a) "modification" or "major modification"; (b) "physical change or change in the method of operation"; (c) "routine maintenance"; (d) "routine repair"; (e) "routine replacement"; (f) "an increase in the hours of operation or in the production rate"; (g) "emission unit"; (h) "pollution control device" or "pollution control project"; (i) "actual emissions" or "representative actual emissions"; (j) "net emission increase"; (k) "allowable emissions" or "source-specific allowable emissions"; (l) "baseline concentration" or "major source baseline data"; (m) "best available control technology"; (n) "lowest achievable emission rate technology"; (o) "potential to emit"; and (p) "modification rule."

80. All documents referring to, describing, or analyzing USEPA practices, standards, or preliminary or final determinations related to the development and application of the standards for Best Available Control Technology ("BACT") to coal-fired power plants under the CAA, including but not limited to the following:

(a) Any proposals ever considered, discussed, or analyzed by USEPA, whether or not made available to any third party, to amend the CAA § 165, 42 U.S.C. § 7475, or

implementing regulations to define, clarify, or modify any of the above standards as they relate to the NSR Programs;

(b) Any final, proposed, or draft guidance documents that refer to, describe, analyze, or otherwise discuss the meaning or interpretation of the above standards as they relate to the NSR Programs;

(c) Any correspondence sent by USEPA or any of its agents to any outside entity that refers to, describe, analyze, or otherwise discuss the meaning, interpretation, or application of the above standards as they relate to the NSR Programs;

(d) Any intra-agency memoranda, letters, e-mails or other correspondence that refer to, describe, analyze or otherwise discuss the meaning or interpretation of the above standards as they relate to the NSR Programs at any particular site or project;

(e) Any written legal analyses, interpretations, interpretive rulings or opinions in the possession of USEPA that refers to, describe, analyze, or otherwise discuss the meaning or interpretation of the above standards as they relate to the NSR Programs;

(f) Any written or unwritten enforcement policies that refer to, describe, analyze, or otherwise discuss the meaning or interpretation of the above standards as they relate to the NSR Programs;

(g) Any final, proposed, or draft penalty assessments, whether issued or not, that rely in whole or part on the meaning or interpretation of the above standards as they relate to the NSR Programs;

(h) Any final, proposed, or draft Notices of Violation, whether issued or not, that rely in whole or part on the meaning or interpretation of the above standards as they relate to the NSR Programs;

(i) Any final, proposed, or draft settlement documents or consent decrees, whether issued or not, that rely in whole or part on the meaning or interpretation of the above standards as they relate to the NSR Programs;

(j) Any and all written materials prepared with or relied on in the development, production, drafting, or issuance of any of the above documents.

81. All documents discussing, describing, or relating in any way to the content and scope of EPA's "debottlenecking policy" as it relates to evaluating whether projects and subject to -- or exempt -- from NSR.

82. All documents discussing, describing, or relating in any way to EPA's review of state actions and determinations regarding the implementation of the PSD and NSR provisions of the Clean Air Act, and North Carolina's and South Carolina's state implementation plans.

83. All documents discussing, describing, or relating in any way to EPA's historical and ongoing efforts to review and revise its PSD/NSR rules.

84. All documents discussing, describing, or relating in any way to work done by EPA contractors relating to the PSD, NSR, and NSPS programs and enforcement thereof.

85. All documents discussing, describing, or relating in any way to EPA's methodology for determining best available control technology or lowest achievable emissions rate technology.

86. All documents discussing, describing, or relating in any way to any and all communications between EPA and other state and federal agencies regarding the PSD and NSR program and CAA Modification Rules as set forth in Title 40 of the Code of Federal Regulations and corresponding state regulations.

87. Any and all communications between EPA and the State of North Carolina or the State of South Carolina regarding the state's federally enforceable State Implementation Plans (SIPs) and revisions thereto.

88. All documents regarding revisions to the State of North Carolina's and the State of South Carolina's federally enforceable SIP.

89. All documents regarding the role of other federal agencies or entities in regulating Duke with respect to the operation of the Plants.

90. All documents regarding the role of other federal agencies or entities in developing the PSD and NSR programs and CAA Modification Rules.

91. All documents in USEPA's possession which contain evidence of any fact supporting your claims for relief in this action.

92. All documents that were authored by or furnished to, or that concern, relate to, refer to, or identify any lay or expert witnesses whom you may call to testify at the trial of this action.

93. All documents, including reports, memoranda, work papers, or notes, prepared or generated by any expert witness who may be called to testify at the trial of this action.

94. To the extent not otherwise produced in response to these requests, all documents that relate to, refer to, identify, or concern air emissions from, air permitting for, or any air enforcement activity related to the Plants or Duke from January 1, 1978 to the present, including, but not limited to, all documents related to USEPA's coal-fired power plant air enforcement initiative commenced in 1997.

95. All documents in the EPA's possession, whether generated by EPA, another agency, or some other third party that relates that life extension of utility units.

96. All documents related to the expected operating life of utility units created to support or address the adoption of Title IV of the Clean Air Act Amendments of 1990.

This the 29th day of June, 2001.

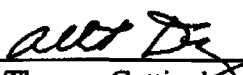
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing **FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO THE UNITED STATES OF AMERICA** was served on the following parties of record as shown below.

This the 29th day of June, 2001.



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EXHIBIT E
TO REPLY BRIEF IN
SUPPORT OF DEFENDANTS'
MOTION TO COMPEL
PLAINTIFF'S COMPLIANCE
WITH RULES
33 AND 34 OF THE
FEDERAL RULES OF CIVIL
PROCEDURE

Jun-08-08 09:28am From-

T-430 P. 02 F-472

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA

Plaintiff,

v.

ILLINOIS POWER COMPANY,

Defendant.

Civil No. 99-833-DRH

**PLAINTIFF UNITED STATES' RESPONSES AND OBJECTIONS
TO DEFENDANT ILLINOIS POWER COMPANY'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

The United States of America hereby submits the following responses and objections to Defendant Illinois Power Company's First Request Production of Documents. In an effort to respond fully to these requests, the United States has undertaken a widespread and in-depth search for responsive documents. Specifically, the United States has evaluated the document collections held by numerous EPA offices, both in Headquarters and in three Regional EPA offices, surveyed scores of EPA employees, and individually interviewed dozens of EPA staff members to determine what documents in EPA's possession may be responsive to these requests.

As the United States explained to Defendant on May 26, 2000, the United States' efforts to respond to these requests are ongoing and, due to the substantial breadth of these requests and the volume of responsive documents, cannot be completed in the time frame normally provided. Thousands of documents are currently being prepared for production from numerous EPA offices, including the Office of Enforcement and Compliance Assurance, the Office of General

Jun-06-00 08:29pm From-

T-438 P.04 F-472

Counsel, the Office of Air Quality Planning and Standards, the Clean Air Markets Division, and EPA's Regional Offices in Chicago, IL, Atlanta GA, and Philadelphia, PA. Additionally, inquiries for responsive documents have been, and are continuing to be made, to other federal agencies. As previously indicated to Defendant, the United States is now making a first phase of documents responsive to certain of Defendant's requests available for review at the Department of Justice. The United States intends to produce a substantial volume of additional documents responsive to these requests beginning on July 1, 2000.

Having said the foregoing, the United States responds to Defendant's First Set for Production of Documents as follows.

GENERAL RESPONSES AND OBJECTIONS

1. The United States objects to each instruction, definition, and request to the extent that it purports to request documents that are beyond the possession, custody, or control of the United States Environmental Protection Agency ("EPA"). Because the United States is comprised of numerous agencies and departments, employs hundreds of thousands of people, and retains thousands of contractors and others "purportedly acting on behalf of the United States of America," such instructions, definitions and requests are over broad and imposes an undue burdensome request on the United States. Moreover, the action filed by the United States against Illinois Power Company ("Illinois Power" or "Defendant") was explicitly filed on behalf of the United States Environmental Protection Agency ("EPA"). See Amended Complaint. Accordingly, all responses given to these requests are provided on behalf of EPA and are limited to the documents in the possession, custody, or control of EPA employees, officers and their counsel.

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T-430 P. 05/43 F-472

2. The United States objects to Defendant's definition of "Clean Air Act Modification Rule" as vague and over broad. Pursuant to the Federal Rules of Civil Procedure, a party propounding discovery is required to identify the items to be produced with reasonable particularity. Fed.R.Civ.P. 34(b). Referring the United States to, among other things, six different federal regulations that have been amended at various times over a period of more than twenty-five years does not comply with the spirit or the letter of the this Rule. Moreover, Defendant's references to other non-specified regulations that define "modification" or "major modification" are unduly vague, ambiguous, and over broad.

3. The United States objects to Defendant's instructions insofar as they require the United States, for every document produced, to identify the document request to which it responds. Defendant's requests for production refer or relate to hundreds of thousands of documents found in locations throughout the United States. Moreover, many of Defendant's requests overlap with others, complicating further any effort to identify which documents are responsive to specified requests. To require the United States to identify, for each document produced, the request to which it is responsive, is not required by the Federal Rules and would be extremely burdensome. Pursuant to the requirements of Fed. R. Civ. Pro. 34(b), the United States will produce documents as they are kept in the usual course of business.

4. The United States objects to each instruction, definition, and request to the extent it seeks the production of documents provided directly to EPA by Defendant, either pursuant to a request by EPA under Section 114, 42 U.S.C. § 7414, or for any other reason. Duplicates of these documents are already within the possession of Defendant and production of these documents by the United States would be unduly burdensome.

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T-430 P.06/43 F-472

5. The United States objects to each instruction, definition, and request to the extent it seeks the production of documents from EPA offices or individuals other than those offices and individuals that administer or enforce the Clean Air Act Amendments, 42 U.S.C. §§ 7401, et seq. Requests seeking the production of documents generated by virtue of, or associated with, EPA's responsibilities under any other federal statute are unduly broad, burdensome, and are not designed to lead to the discovery of admissible evidence.

6. The United States objects to each instruction, definition, and request to the extent it seeks the production of documents from offices other than those that (1) are located in EPA Headquarters or EPA's Region V offices in Chicago, Illinois (which has jurisdiction over the area in which the Defendant's plant is located and in which EPA alleges the violations occurred); and (2) administer or enforce the Clean Air Act. Requests seeking the production of documents from any other EPA office or location are unduly broad, burdensome, and are not designed to lead to the discovery of admissible evidence.

7. The United States objects to each request for production of documents, as over broad and burdensome, to the extent it seeks the production of documents that are available and accessible to the general public, either directly from the document's publisher, from a local, state or federal government agency or entity, or may be downloaded in their complete and unabridged form from the Internet. Notwithstanding this objection, the United States will produce to Defendant an index of all documents that are contained in the public records associated with each rulemaking that is responsive to Defendant's requests. The United States will also provide the cover and title pages sufficient to identify the publisher or source of all publicly available documents that are responsive to Defendant's request. In addition, where applicable, the United

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T-438 P-07/48 F-472

States will identify publicly available databases maintained by the EPA that may contain documents responsive to a Defendant's request.

8. The United States objects to these requests to the extent they seek the production of documents contained in EPA regional or United States Department of Justice ("DOJ") enforcement case files, other than those files directly associated with, and generated by virtue of, the instant action. Since the inception of the Clean Air Act, EPA has investigated thousands of potential and actual Clean Air Act violations, some of which have been referred to DOJ for prosecution. The enforcement case files associated with such actions are extremely voluminous. The United States objects to these requests to the extent that they seek the production of documents from such files as overly broad, burdensome, and irrelevant.

9. The United States objects to each instruction, definition, and request to the extent it seeks the production of identical, unmodified duplicates of the same document as overly broad, burdensome, and harassing.

10. The United States objects to these requests to the extent that they seek the production of documents concerning industries other than the coal-fired steam electricity generating industry, of which Defendant is a member. Requests that seek the production of documents concerning petroleum refineries, for example, are overly broad and burdensome. Moreover, such requests are not designed to lead to the discovery of admissible evidence.

11. The United States objects to each request to the extent it seeks the production of documents that were submitted to EPA, or any other government agency, under a claim of business confidentiality, trade secret, or other proprietary restriction.

12. The United States objects to each request to the extent it seeks the production of

documents that have been sent to any Federal Records Depository or Federal Records Center as overly broad and burdensome.

13. The United States objects to each of Defendant's requests for production, definitions, and instructions to the extent that they call for information that is protected from discovery under the attorney-client privilege, the work product doctrine, the deliberative process privilege, or any other doctrine immunizing documents or communications from discovery. The United States will invoke such privileges and protections where appropriate, and any statement herein indicating a willingness to produce documents is expressly made subject to such claims of privilege and protection. Further, the United States will provide a privilege log, pursuant to Fed. R. Civ. Pro. 26(b)(5), identifying those documents which it claims are immune from production.

14. The United States objects to Defendant's instructions to the extent they require the United States to set forth a proposed construction of an ambiguous document production request. Such instruction is vague, over broad, calls for a subjective judgment on the part of the United States, and would require a conclusion or opinion of counsel in violation of the work product doctrine.

15. The United States objects to Defendant's instructions that it identify documents formerly in its possession and describe the circumstances surrounding present non-availability. Such instruction is burdensome and over broad, as the volume and types of documents are so voluminous that it is virtually impossible to do so.

16. The United States objects to each request for production to the extent it seeks irrelevant or immaterial information, documents, or communications.

17. The United States objects to each instruction and definition to the extent it purports

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T-430 P.09/43 F-472

to impose requirements beyond those contained in the Federal Rules of Civil Procedure, the Local Rules of the Southern District of Illinois, or the case management orders of the Court.

The foregoing General Objections and Responses are incorporated into each of the individual responses below. As discovery in this action is ongoing, the United States reserves the right to supplement its responses pursuant to Federal Rule of Civil Procedure 26(e).

SPECIFIC RESPONSES AND OBJECTIONS

Request No. 1.

All documents reflecting, referring or relating to your allegations that: "Numerous times, Defendant modified, and thereafter operated, its electric generating units at the Baldwin Power Station coal-fired electricity generating power plant in Randolph County, Illinois without first obtaining appropriate permits authorizing construction of modifications at these units and without installing the best available control technology to control emissions of nitrogen oxides, sulfur dioxide, and particulate matter, as the Act, applicable federal regulations and the Illinois SIP requires." (Amended Complaint at ¶ 1).

Response to Request No. 1

Subject to, and without waiving its General Objections above, the United States will produce non-privileged documents responsive to this request. The United States reserves the right to supplement this response at a later time. Non-privileged documents responsive to this request are available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. Furthermore, as discovery in this matter is ongoing, the United States is continuing to collect and prepare for production additional document collections that may contain documents responsive to this request. The United States

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will begin to make such documents available on July 1, 2000.

Responsive documents are produced in the manner in which they were kept in the normal course of business and are organized according to the source of the documents. The following is a list of the source of the documents currently available:

Files of Spiros Bourgikos, EPA Region 5 Air and Radiation Division (Files assigned Bates ranges EPA5IPB 00001-01098, EPA5IPB 03001-05173 and EPA5IPB 06001-09110)

Files from the Enforcement Case File Room in EPA Region 5 Air and Radiation Division (Files assigned Bates range EPA5IPB 01099-01360)

Files of David Schulz, EPA Region 5 Air and Radiation Division (Files assigned Bates range EPA5IPB 01361-01550)

Files of Loren Demott, EPA Region 5 Air and Radiation Division (Files assigned Bates range EPA5IPB 01551-01562)

Files of Sabrina Argentiari, EPA Region 5 Office of Regional Counsel (Files assigned Bates range EPA5IPB 09111-09113)

Files of Louise Gross, EPA Region 5 Office of Regional Counsel (Files assigned Bates range EPA5IPB 09114-09128)

Files of Jose' de Leon, EPA Region 5 Office of Regional Counsel (Files assigned Bates range EPA5IPB 09129-10056)

Request No. 2.

All documents reflecting, referring or relating to your allegations that: "As a result of Defendant's operation of the power plant following these unlawful modifications and the absence of appropriate controls, massive amounts of sulfur dioxide, nitrogen oxides, and particulate matter have been, and still are being, released into the atmosphere aggravating air pollution locally and far downwind from this plant." (Amended Complaint at ¶ 2).

Response to Request No. 2.

Subject to, and without waiving its General Objections above, the United States objects to this request as over broad and burdensome. Although this request seeks documents supporting

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T-430 P.11/43 P-472

EPA's allegation, it is limited neither to documents created by EPA or to documents expressing the position of EPA on these matters. Insofar as this request seeks documents "reflecting, referring, or relating" to the regional transport of air pollutants, documents responsive to this request are extremely voluminous and are located in numerous EPA offices around the Nation. Notwithstanding this objection, and the General Objections above, the United States has undertaken a search for such documents. Non-privileged responsive documents are available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. Responsive documents are produced in the manner in which they were kept in the normal course of business and are organized according to the source of the documents. A listing of the source of such documents is provided in response to Request number 1, above.

Furthermore, as discovery in this matter is ongoing, the United States is continuing to collect and prepare for production additional document collections that may contain documents responsive to this request. The United States will begin to make such documents available on July 1, 2000.

Request No. 3.

All documents reflecting, referring or relating to each and every activity identified in your answer to Illinois Power's First Set of Interrogatories, Interrogatory Nos. 2-4, including but not limited to your allegations that the activities were a "modification" construction of a new emission source or "major modification" and when you or Illinois learned of the activities. (Amended Complaint at ¶¶ 63, 73, 81; see also Notice of Violation at ¶ 9).

Response to Request No. 3.

The United States objects to this request to the extent it is vague and ambiguous, as the

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T-438 P-12/43 F-472

phrase "learned of the activities" is subject to varying interpretations. It is unclear what the Defendant means by the term "learned" and the extent of knowledge necessary for one to have learned of such activities. Similarly, the term "activities" is not defined and could mean either each major modification alleged or the construction associated with each major modification. The United States further objects to this request to the extent that it seeks documents "reflecting, referring, or relating to" the time when any "departments, agencies, instrumentalities of any kind, employees, agents, consultants, contractors, or other persons acting on [the United States'] behalf" learned of such "activities," as overbroad, burdensome, and irrelevant. Under this interpretation, a search for responsive documents would require an examination of an enormous amount of material and is unlikely to lead to the discovery of relevant material. Moreover, the United States objects to this request insofar as it seeks documents or information within the possession or control of the state of Illinois. Additionally, the United States objects to this request to the extent this request for production calls for documents protected from discovery by the attorney-client privilege and work product doctrine.

Without waiving these specific objections and the abovementioned general objections, the United States has undertaken a search for such documents. Non-privileged responsive documents are available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. Responsive documents are produced in the manner in which they were kept in the normal course of business and are organized according to the source of the documents. A listing of the source of such documents is provided in response to Request number 1, above.

Jun-06-00 08:32pm From-

T-430 P.13/43 F-472

Furthermore, as discovery in this matter is ongoing, the United States is continuing to collect and prepare for production additional document collections that may contain documents responsive to this request. The United States will begin to make such documents available on July 1, 2000.

Request No. 4.

All documents reflecting, referring or relating to your allegation that "Defendant constructed additional 'major modifications' to its plant beyond those described in [paragraph 63 of the Amended Complaint]." (Amended Complaint at ¶ 63).

Response to Request No. 4.

Subject to, and without waiving its General Objections above, the United States objects to this request to the extent this request for production calls for documents protected from discovery by the attorney-client privilege and work product doctrine. Notwithstanding this objection, and the General Objections above, the United States has undertaken a search for such documents. Non-privileged responsive documents are available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. Responsive documents are produced in the manner in which they were kept in the normal course of business and are organized according to the source of the documents. A listing of the source of such documents is provided in response to Request number 1, above.

Furthermore, as discovery in this matter is ongoing, the United States is continuing to collect and prepare for production additional document collections that may contain documents responsive to this request. The United States will begin to make such documents available on July 1, 2000.

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Request No. 5.

All documents reflecting, referring or relating to your allegations that: "These modifications resulted in significant net emission increases, as defined by 40 C.F.R. § 52.21(b)(3)(I), of one or more of the following: NO_x, SO₂, and PM," including but not limited to:

- a. the "actual emissions," as defined under 40 C.F.R. § 52.21(b)(21), before and after each activity identified in your answer to Illinois Power's First Set of Interrogatories, Interrogatory No. 2;
- b. the "potential to emit," as defined under 40 C.F.R. § 52.21(b)(4), before and after each activity identified in your answer to Illinois Power's First Set of Interrogatories, Interrogatory No. 2;
- c. the difference in "actual emissions" before and after each activity identified in your answer to Illinois Power's First Set of Interrogatories, Interrogatory No. 2, assuming the unit is operated under the same hours and conditions that existed before the activity;
- d. the actual emissions during the selected time period for the allegations in the Amended Complaint using the unit's actual operating hours, production rates, and type of materials processed, stored, or combusted during the selected time periods;
- e. the "net emissions increase" attributed to each activity identified in your answer to Illinois Power's First Set of Interrogatories, Interrogatory No. 2;
- f. the causal relationship between each activity identified in your answer to Illinois Power's First Set of Interrogatories, Interrogatory No. 2 and any significant net increase in emissions;
- g. the determination that any increase of emissions was not due to an increase in the hours of operation or in the production rate within the meaning of the Clean Air Act Modification Rule;
- h. the "representative actual emissions," as defined under 40 C.F.R. § 52.21(b)(33), and the time period used to determine "representative actual emissions"
- i. the "source-specific allowable emissions," as defined under 40 C.F.R. § 52.21(b)(16), before and after the project or change;

(Amended Complaint at ¶ 63; see also Notice of Violation at ¶ 14).

Response to Request No. 5.

Subject to, and without waiving its General Objections above, the United States objects to this request to the extent this request for production calls for documents protected from discovery by the attorney-client privilege and work product doctrine. Notwithstanding this objection, and the General Objections above, the United States has undertaken a search for such documents.

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Non-privileged responsive documents are available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. Responsive documents are produced in the manner in which they were kept in the normal course of business and are organized according to the source of the documents. A listing of the source of such documents is provided in response to Request number 1, above.

Furthermore, as discovery in this matter is ongoing, the United States is continuing to collect and prepare for production additional document collections that may contain documents responsive to this request. The United States will begin to make such documents available on July 1, 2000.

Request No. 6.

For each activity identified in your answers to Illinois Power's First Set of Interrogatories, Interrogatory Nos. 2-4, all documents reflecting, referring or relating to whether (a) the activity caused the unit to increase its achievable emission rate; (b) the alleged increase in emissions after each activity could have been accommodated within the design capacity of the plant; and (c) the predominant cause of the emissions increase was the physical or operational change in question and not an independent factor.

Response to Request No. 6.

Subject to, and without waiving its General Objections above, the United States objects to this request to the extent this request for production calls for documents protected from discovery by the attorney-client privilege and work product doctrine. Notwithstanding this objection, and the General Objections above, the United States has undertaken a search for such documents. Non-privileged responsive documents are available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005. Please contact Pamela

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Lee or Nicole Vailletux to make arrangements for the review of these documents. Responsive documents are produced in the manner in which they were kept in the normal course of business and are organized according to the source of the documents. A listing of the source of such documents is provided in response to Request number 1, above.

Furthermore, as discovery in this matter is ongoing, the United States is continuing to collect and prepare for production additional document collections that may contain documents responsive to this request. The United States will begin to make such documents available on July 1, 2000.

Request No. 7.

All documents reflecting, referring or relating to your allegations that: "During 1990, Defendant replaced portions of the cold-end air heater tubes in Unit 1. The replacement was completed on May 31, 1990. The replacement increased the gross megawatt generation capacity at Unit 1, and the maximum hourly emissions rate of PM, NOx, and SO2 from Unit 1, above the maximum hourly emissions previously achieved" including but not limited to:

- a. documents showing the data relied upon for your allegations and the sources of that data;
- b. documents showing the maximum emission rate and the kilogram per hour of each pollutant, both before and after each activity identified in your answer to Illinois Power's First Set of Interrogatories, Interrogatory No. 3; and
- c. documents showing the "emissions unit" for purposes of 40 C.F.R. § 52.21(b)(7), and the "affected facility" and the "existing facility" for purposes of 40 C.F.R. §§ 60.1 and 60.14;
- d. the maximum hourly and annual emissions and the emissions limits legally and physically achievable before and after the project or change for purposes of 40 C.F.R. § 60.14(h), and the time period used to determine such emissions.

(Amended Complaint at ¶ 70).

Response to Request No. 7.

Subject to, and without waiving its General Objections above, the United States objects to this request to the extent this request for production calls for documents protected from discovery by the attorney-client privilege and work product doctrine. Notwithstanding this objection, and

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the General Objections above, the United States has undertaken a search for such documents. Non-privileged responsive documents are available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. Responsive documents are produced in the manner in which they were kept in the normal course of business and are organized according to the source of the documents. A listing of the source of such documents is provided in response to Request number 1, above.

Furthermore, as discovery in this matter is ongoing, the United States is continuing to collect and prepare for production additional document collections that may contain documents responsive to this request. The United States will begin to make such documents available on July 1, 2000.

Request No. 8.

All documents reflecting, referring or relating to your allegations that: "During the Spring of 1988, Defendant replaced portions of Unit 2's cold end air heater tubes. The replacement increased the gross megawatt generation capacity at Unit 2 and the maximum hourly emission rate of SO₂, NO_x, and PM from Unit 2 above the maximum hourly emissions previously achieved." (Amended Complaint at ¶ 72).

Response to Request No. 8.

Subject to, and without waiving its General Objections above, the United States objects to this request to the extent this request for production calls for documents protected from discovery by the attorney-client privilege and work product doctrine. Notwithstanding this objection, and the General Objections above, the United States has undertaken a search for such documents. Non-privileged responsive documents are available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005. Please contact Pamela

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Lee or Nicole Veilleux to make arrangements for the review of these documents. Responsive documents are produced in the manner in which they were kept in the normal course of business and are organized according to the source of the documents. A listing of the source of such documents is provided in response to Request number 1, above.

Furthermore, as discovery in this matter is ongoing, the United States is continuing to collect and prepare for production additional document collections that may contain documents responsive to this request. The United States will begin to make such documents available on July 1, 2000.

Request No. 2

For each activity identified in your answer to Illinois Power's First Set of Interrogatories, Interrogatory No. 4, all documents reflecting, referring or relating to your allegations that: "At various times, Defendant commenced construction of a new emission source or caused or allowed the modification of an existing emission source which resulted in an increase in the amount of a specified air contaminant emitted." (Amended Complaint at ¶ 81).

Response to Request No. 2.

Subject to, and without waiving its General Objections above, the United States objects to this request to the extent this request for production calls for documents protected from discovery by the attorney-client privilege and work product doctrine. Notwithstanding this objection, and the General Objections above, the United States has undertaken a search for such documents.

Non-privileged responsive documents are available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. Responsive documents are produced in the manner in which they were kept in the normal course of business and are organized according to the source of the documents. A listing of the source of such

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documents is provided in response to Request number 1, above.

Furthermore, as discovery in this matter is ongoing, the United States is continuing to collect and prepare for production additional document collections that may contain documents responsive to this request. The United States will begin to make such documents available on July 1, 2000.

Request No. 10.

All documents reflecting, referring or relating to any formal or informal inspection or visit of the defendant's Baldwin plant by you or Illinois as it relates to each and every activity identified in your answers to Illinois Power's First Set of Interrogatories, Interrogatory Nos. 2-4.

Response to Request No. 10.

Subject to, and without waiving its General Objections above, the United States objects to this request as vague and ambiguous as to the phrase "any formal or informal inspection or visit." Moreover, the United States objects to this request insofar as it seeks documents or information within the possession or control of the state of Illinois. The United States further objects to this request to the extent this request for production calls for documents protected from discovery by the attorney-client privilege and work product doctrine, including but not limited to documents prepared in connection with ongoing investigations.

Notwithstanding these objections, and the General Objections above, the United States has undertaken a search for such documents. Non-privileged responsive documents are available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. Responsive documents are produced in the manner in which they were kept in the normal course of business and are organized according to the source of the

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documents. A listing of the source of such documents is provided in response to Request number 1, above.

Furthermore, as discovery in this matter is ongoing, the United States is continuing to collect and prepare for production additional document collections that may contain documents responsive to this request. The United States will begin to make such documents available on July 1, 2000.

Request No. 11.

All documents reflecting, referring or relating to your interpretation of the Clean Air Act, the Clean Air Act Modification Rule, or the Illinois SIP permit provisions to indicate which events constitute a "modification," construction of a new emission source, or "major modification" as used in the Clean Air Act, the Clean Air Act Modification Rule or the Illinois SIP permit provisions, including but not limited to documents reflecting, referring or relating to (a) defendant's Baldwin plant; and (b) activities of the kind identified in your answers to Illinois Power's First Set of Interrogatories, Interrogatory Nos. 2-4.

Response to Request No. 11.

Subject to, and without waiving its General Objections above, the United States objects to this request as burdensome, over broad, vague, ambiguous, and irrelevant. The term "modification," for example, is "used" in the Clean Air Act in a variety of ways, and "all documents referring" to any such use of the term are not only voluminous, but many are immaterial to the instant action. The United States further objects to the extent this request for production calls for documents protected from discovery by the deliberative process privilege, the attorney-client privilege or the work product doctrine. The United States further objects to this request to the extent that it seeks documents "reflecting, referring, or relating to" the time when any "departments, agencies, instrumentalities of any kind, employees, agents, consultants, contractors, or other persons acting on [the United States'] behalf" learned of such "activities," as

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overbroad, burdensome, and irrelevant. Under this interpretation, a search for responsive documents would require an examination of an enormous amount of material and is unlikely to lead to the discovery of relevant material.

Notwithstanding these objections, and the General Objections above, the United States has undertaken a search for such documents. Non-privileged responsive documents are available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. Responsive documents are produced in the manner in which they were kept in the normal course of business and are organized according to the source of the documents. A listing of the source of such documents is provided in response to Request number 1, above.

Furthermore, as discovery in this matter is ongoing, the United States is continuing to collect and prepare for production additional document collections that may contain documents responsive to this request. The United States will begin to make such documents available on July 1, 2000.

Request No. 12.

All documents reflecting, referring or relating to any of the activities identified in your answers to Illinois Power's First Set of Interrogatories, Interrogatory Nos. 2-4 that were submitted or prepared by, at the direction of, or on behalf of the defendant.

Response to Request No. 12

Subject to, and without waiving its General Objections above, the United States objects to this request as unduly burdensome to the extent that duplicates of these documents are already within the possession of Defendant. Notwithstanding this objection, and the General Objections

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above, certain responsive documents are available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. Responsive documents are produced in the manner in which they were kept in the normal course of business and are organized according to the source of the documents. A listing of the source of such documents is provided in response to Request number 1, above.

Furthermore, as discovery in this matter is ongoing, the United States is continuing to collect and prepare for production additional document collections that may contain documents responsive to this request. The United States will begin to make such documents available on July 1, 2000.

Request No. 13

All documents reflecting, referring or relating to your interpretation of the Clean Air Act, the Clean Air Act Modification Rule, or the Illinois SIP permit provisions that refer or relate to your allegations that the "modifications," construction of a new emission source, or "major modifications," identified in your answers to Illinois Power's First Set of Interrogatories, Interrogatory Nos. 2-4 were subject to the Prevention of Significant Deterioration (PSD) program, New Source Performance Standards (NSPS), or the Illinois SIP permit provisions, including but not limited to documents that were provided to the defendant.

Response to Request No. 13

Subject to, and without waiving its General Objections above, the United States objects to this request as burdensome, over broad, vague, ambiguous, and irrelevant. Insofar as Defendant seeks "[a]ll documents *referring . . . to your interpretation of the Clean Air Act . . . that relate to*" certain allegations, for example, the United States objects to this request as extremely over broad, vague, and burdensome, because as it encompasses a great volume of

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material, most of which is irrelevant to this action. Moreover, the United States objects to the extent this request for production calls for documents protected from discovery by the deliberative process privilege, the attorney-client privilege or the work product doctrine.

Notwithstanding these objections, and the General Objections above, the United States has undertaken a search for such documents. Non-privileged responsive documents are available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. Responsive documents are produced in the manner in which they were kept in the normal course of business and are organized according to the source of the documents. A listing of the source of such documents is provided in response to Request number 1, above.

Furthermore, as discovery in this matter is ongoing, the United States is continuing to collect and prepare for production additional document collections that may contain documents responsive to this request. The United States will begin to make such documents available on July 1, 2000.

Request No. 14.

All documents reflecting, referring or relating to any correspondence with the General Accounting Office or any members of Congress, their committees or their personal or committee staffs concerning the Clean Air Act Modification Rule or otherwise relating to the subject matter of this action or any of the six related actions against coal-fired electric generating facilities in any way.

Response to Request No 14.

Subject to, and without waiving its General Objections above, the United States objects to this request as vague, over broad, burdensome, as the request extends to a great volume of

material. Moreover, the United States objects to this request as irrelevant, as many of the documents requested are immaterial to the instant action. The United States further objects to the request insofar as it seeks documents beyond the possession, custody, or control of the United States Environmental Protection Agency. Additionally, the United States objects to this request to the extent it seeks documents protected from discovery by the deliberative process privilege, the attorney-client privilege or the work product doctrine.

Notwithstanding these objections, and the General Objections above, the United States has undertaken a search for such documents in files associated with the EPA's administration and enforcement of the Clean Air Act, which may contain documents responsive to this request. An initial inventory of the files that may contain documents responsive to this and similar requests indicates that several million pages of files would have to be searched in EPA offices located throughout the United States. The location, review, numbering, copying, and privilege review of such documents is well underway but, due to the burdensome nature of this and related requests and the volume of responsive documents, cannot be completed in the time frame normally provided.

Non-privileged responsive documents will be available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005 beginning on July 1, 2000. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents.

Request No. 15.

All documents that describe the criteria or other basis the EPA uses, if any, to determine whether a "physical change or change in the method of operation" does or does not include "an increase in the hours of operation or in the rate of production" that is not prohibited under any

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federally enforceable permit condition which was established after January 1, 1975, pursuant to 40 C.F.R. § 52.21 or under regulations approved pursuant to 40 C.F.R. subpart I or 40 C.F.R. § 51.166.

Response to Request No. 15.

Subject to, and without waiving its General Objections above, the United States objects to the extent this request for production calls for documents protected from discovery by the deliberative process privilege, the attorney-client privilege or the work product doctrine. The United States further objects to this request as vague, over broad, burdensome, as the request extends to a great volume of material. Moreover, the United States objects to this request as irrelevant, as many of the documents requested are immaterial to the instant action. The United States further objects to the request insofar as it seeks documents beyond the possession, custody, or control of the United States Environmental Protection Agency.

Notwithstanding these objections, and the General Objections above, the United States has undertaken a search for such documents in files associated with the EPA's administration and enforcement of the Clean Air Act, which may contain documents responsive to this request. The location, review, numbering, copying, and privilege review of such documents is well underway but, due to the burdensome nature of this and related requests and the volume of responsive documents, cannot be completed in the time frame normally provided.

Non-privileged responsive documents will be available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005 beginning on July 1, 2000. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. As discovery in this matter is ongoing, the United States reserves the right to supplement this response at a later time.

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Request No. 16.

All documents reflecting, referring or relating to the useful life of the Baldwin Station, or repair, replacement or maintenance activities required to achieve that useful life.

Response to Request No. 16

Subject to, and without waiving its General Objections above, the United States will produce non-privileged documents responsive to this request. Such documents are available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. Responsive documents are produced in the manner in which they were kept in the normal course of business and are organized according to the source of the documents. A listing of the source of such documents is provided in response to Request number 1, above.

Furthermore, as discovery in this matter is ongoing, the United States is continuing to collect and prepare for production additional document collections that may contain documents responsive to this request. The United States will begin to make such documents available on July 1, 2000.

Request No. 17.

All documents reflecting, referring or relating to any testimony or statement, written or oral, in any proceeding by anyone affiliated with or on behalf of you concerning the Clean Air Act Modification Rule or otherwise relating to the subject matter of this action in any way.

Response to Request No. 17.

Subject to, and without waiving its General Objections above, the United States objects to this request as over broad and burdensome, as the request extends to a great volume of material.

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Moreover, the United States objects to this request as irrelevant, as many of the documents requested are immaterial to the instant action. The United States further objects to this request as vague, insofar as it refers to "anyone affiliated with or on behalf of you," as well as to "otherwise relating to the subject matter of this action in any way." Further, the United States objects insofar as this request seeks documents beyond the possession, custody, or control of the United States Environmental Protection Agency. Additionally, the United States objects to this request to the extent it seeks documents protected from discovery by the deliberative process privilege, the attorney-client privilege or the work product doctrine.

Notwithstanding these objections, and the General Objections above, the United States has undertaken a search for such documents in files associated with the EPA's administration and enforcement of the Clean Air Act, which may contain documents responsive to this request. The location, review, numbering, copying, and privilege review of such documents is well underway but, due to the burdensome nature of this and related requests and the volume of responsive documents, cannot be completed in the time frame normally provided.

Non-privileged responsive documents will be available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005 beginning on July 1, 2000. Please contact Pamela Lee or Nicole Vailleux to make arrangements for the review of these documents. As discovery in this matter is ongoing, the United States reserves the right to supplement this response at a later time.

Request No. 18.

All documents reflecting, referring or relating to any speeches or other public pronouncements by or on behalf of you concerning the Clean Air Act Modification Rule or otherwise relating to the subject matter of this action in any way.

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Response to Request No. 18.

Subject to, and without waiving its General Objections above, the United States objects to this request as over broad and burdensome, as the request extends to a great volume of material. Moreover, the United States objects to this request as irrelevant, as many of the documents requested are immaterial to the instant action. The United States further objects to this request as vague, insofar as it refers to all "public pronouncements" and to matters "otherwise relating to the subject matter of this action in any way." Further, the United States objects insofar as this request seeks documents beyond the possession, custody, or control of the United States Environmental Protection Agency. Additionally, the United States objects to this request to the extent it seeks documents protected from discovery by the deliberative process privilege, the attorney-client privilege or the work product doctrine.

Notwithstanding these objections, and the General Objections above, the United States has undertaken a search for such documents in files associated with the EPA's administration and enforcement of the Clean Air Act, which may contain documents responsive to this request. The location, review, numbering, copying, and privilege review of such documents is well underway but, due to the burdensome nature of this and related requests and the volume of responsive documents, cannot be completed in the time frame normally provided.

Non-privileged responsive documents will be available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005 beginning on July 1, 2000. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. As discovery in this matter is ongoing, the United States reserves the right to supplement this response at a later time.

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Request No. 19.

All documents prepared or dated at any time since 1971 that reflect, refer, relate to or identify criteria to be applied by you, Illinois or other persons to differentiate maintenance, repair, or replacement that is "routine" from that which is "non routine" for any purpose, including without limitation for purposes of the Clean Air Act Modification Rule.

Response to Request No. 19.

Subject to, and without waiving its General Objections above, the United States objects to this request as over broad and burdensome, as the request extends to a great volume of material. For example, this request extends to all documents prepared or collected by the United States for over nearly 30 years, and is limited to neither the New Source Review provisions at issue here, nor even the Clean Air Act Amendments under which this action was brought. Moreover, the United States objects to this request as irrelevant, as many of the documents requested are immaterial to the instant action. The United States further objects to this request as vague, as it refers to documents that refer to criteria to be applied by "other persons" and "for any purpose." Further, the United States objects insofar as this request seeks documents beyond the possession, custody, or control of the United States Environmental Protection Agency. Additionally, the United States objects to this request to the extent it seeks documents protected from discovery by the deliberative process privilege, the attorney-client privilege or the work product doctrine.

Notwithstanding these objections, and the General Objections above, the United States has undertaken a search for such documents in files associated with the EPA's administration and enforcement of the Clean Air Act, which may contain documents responsive to this request. The location, review, numbering, copying, and privilege review of such documents is well underway but, due to the burdensome nature of this and related requests and the volume of responsive

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documents, cannot be completed in the time frame normally provided.

Non-privileged responsive documents will be available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005 beginning on July 1, 2000. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. As discovery in this matter is ongoing, the United States reserves the right to supplement this response at a later time.

Request No. 20.

All documents reflecting, referring or relating to any requirement that electric utilities must maintain their facilities under state and federal laws, including duties imposed by any state public utility commission on electric utilities that requires electric utilities to make improvements and repairs needed to ensure continuous and reliable service to customers.

Response to Request No. 20.

Subject to, and without waiving its General Objections above, the United States objects to this request as irrelevant, as many of the documents requested are immaterial to the instant action. Further, the United States objects insofar as this request seeks documents beyond the possession, custody, or control of the United States Environmental Protection Agency. Notwithstanding these objections, and the General Objections above, the United States has undertaken a search for such documents in files associated with the EPA's administration and enforcement of the Clean Air Act, which may contain documents responsive to this request. The location, review, numbering, copying, and privilege review of such documents is well underway but, due to the burdensome nature of this and related requests and the volume of responsive documents, cannot be completed in the time frame normally provided.

Non-privileged responsive documents will be available for review at the offices of the

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United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005
beginning on July 1, 2000. Please contact Pamela Lee or Nicole Veilleux to make arrangements
for the review of these documents. As discovery in this matter is ongoing, the United States
reserves the right to supplement this response at a later time.

Request No. 21.

All documents, including communications between you and Illinois, reflecting, referring
or relating to what constitutes a modification or the manner or method of calculating emission
increases for purposes of the definition of "modification" under 35 Illinois Administrative Code
§ 201.102.

Response to Request No. 21.

United States objects to this request insofar as it seeks documents beyond the possession,
custody, or control of the United States Environmental Protection Agency. Additionally, the
United States objects to this request to the extent this request for production calls for documents
protected from discovery by the attorney-client privilege and work product doctrine.

Without waiving these specific objections and the abovementioned general objections,
the United States has undertaken a search for such documents. Non-privileged responsive
documents are available for review at the offices of the United States Department of Justice,
1425 New York Avenue, Washington D.C. 20005. Please contact Pamela Lee or Nicole
Veilleux to make arrangements for the review of these documents. Responsive documents are
produced in the manner in which they were kept in the normal course of business and are
organized according to the source of the documents. A listing of the source of such documents is
provided in response to Request number 1, above.

Furthermore, as discovery in this matter is ongoing, the United States is continuing to

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collect and prepare for production additional document collections that may contain documents responsive to this request. The United States will begin to make such documents available on July 1, 2000.

Request No. 22.

All documents generated at any time that demonstrate, discuss, concern, reflect, refer or relate to the need for or benefit from the acid rain provision of the 1990 Clean Air Act Amendments, including without limitation documents that demonstrate, discuss, concern, reflect, refer, or relate to such need or benefit in light of the New Source Performance Standards (NSPS), New Source Review (NSR) and Prevention of Significant Deterioration (PSD) statutory and regulatory provisions and programs.

Response to Request No. 22.

Subject to, and without waiving its General Objections above, the United States objects to this request as vague, ambiguous, over broad and burdensome. First, the request extends to a great volume of material, as it encompasses all documents prepared or collected by the United States for over ten years that relate to an entire Title of the Clean Air Act Amendments (under which this action was not brought), which is daily administered by dozens of EPA officers and employees. Moreover, the request refers to vague and ambiguous terms such as "the need for or benefit from" the Acid Rain provisions, and the "need or benefit in light of" other Clean Air Act provisions. The United States further objects to this request as irrelevant, as many of the documents requested are immaterial to the instant action. Additionally, the United States objects insofar as this request seeks documents beyond the possession, custody, or control of the United States Environmental Protection Agency.

Notwithstanding these objections, and the General Objections above, the United States has undertaken a search for such documents in files associated with the EPA's administration and

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enforcement of the Clean Air Act, which may contain documents responsive to this request. The location, review, numbering, copying, and privilege review of such documents is well underway but, due to the burdensome nature of this and related requests and the volume of responsive documents, cannot be completed in the time frame normally provided.

Non-privileged responsive documents will be available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005 beginning on July 1, 2000. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. As discovery in this matter is ongoing, the United States reserves the right to supplement this response at a later time.

Request No. 23.

All documents reflecting, referring or relating to any and all applicability determinations made by you under 40 C.F.R. § 52.21 or referred to you by any state from January 1, 1973 to date.

Response to Request No. 23.

Subject to, and without waiving its General Objections above, the United States objects to this request as vague, over broad and burdensome as the request extends to a great volume of material. Moreover, the United States objects to this request as irrelevant, as most of the documents requested are immaterial to the instant action. Further, the United States objects insofar as this request seeks documents beyond the possession, custody, or control of the United States Environmental Protection Agency. Additionally, the United States objects to this request to the extent it seeks documents protected from discovery by the deliberative process privilege, the attorney-client privilege or the work product doctrine.

Notwithstanding these objections, and the General Objections above, the United States

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has undertaken a search for such documents in files associated with the EPA's administration and enforcement of the Clean Air Act, which may contain documents responsive to this request. The location, review, numbering, copying, and privilege review of such documents is well underway but, due to the burdensome nature of this and related requests and the volume of responsive documents, cannot be completed in the time frame normally provided.

Non-privileged responsive documents will be available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005 beginning on July 1, 2000. Please contact Pamela Lee or Nicole Villeux to make arrangements for the review of these documents. As discovery in this matter is ongoing, the United States reserves the right to supplement this response at a later time.

Request No. 24.

All documents reflecting, referring or relating to any and all applicability determinations made by you under 40 C.F.R. § 60.5 or referred to you by any state from 1971 to date, including without limitation those determinations made for Fossil Fuel Fired Steam Generators, Electric Utility Steam Generating Units, Industrial-Commercial-Institutional Steam Generating Units, and Stationary Gas Turbines.

Response to Request No. 24.

Subject to, and without waiving its General Objections above, the United States objects to this request as vague, over broad and burdensome as the request extends to a great volume of material. Moreover, the United States objects to this request as irrelevant, as many of the documents requested are immaterial to the instant action. Further, the United States objects insofar as this request seeks documents beyond the possession, custody, or control of the United States Environmental Protection Agency. Additionally, the United States objects to this request to the extent it seeks documents protected from discovery by the deliberative process privilege,

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the attorney-client privilege or the work product doctrine.

Notwithstanding these objections, and the General Objections above, the United States has undertaken a search for such documents in files associated with the EPA's administration and enforcement of the Clean Air Act, which may contain documents responsive to this request. The location, review, numbering, copying, and privilege review of such documents is well underway but, due to the burdensome nature of this and related requests and the volume of responsive documents, cannot be completed in the time frame normally provided.

Non-privileged responsive documents will be available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005 beginning on July 1, 2000. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. As discovery in this matter is ongoing, the United States reserves the right to supplement this response at a later time.

Request No. 25.

All documents reflecting, referring or relating to any and all Prevention of Significant Deterioration (PSD) or New Source Performance Standards (NSPS) applicability determinations made by Illinois or any determination made by Illinois regarding the applicability of construction permit requirements to existing sources undergoing a "modification" as defined by 35 Illinois Administrative Code § 201.102.

Response to Request No. 25.

Subject to, and without waiving its General Objections above, the United States objects to this request as vague, over broad and burdensome as the request extends to a great volume of material. Moreover, the United States objects to this request as irrelevant as many of the documents requested are immaterial to the instant action. Further, the United States objects insofar as this request seeks documents beyond the possession, custody, or control of the United

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States Environmental Protection Agency. Additionally, the United States objects to this request to the extent it seeks documents protected from discovery by the deliberative process privilege, the attorney-client privilege or the work product doctrine.

Notwithstanding these objections, and the General Objections above, the United States has undertaken a search for such documents in files associated with the EPA's administration and enforcement of the Clean Air Act, which may contain documents responsive to this request. The location, review, numbering, copying, and privilege review of such documents is well underway but, due to the burdensome nature of this and related requests and the volume of responsive documents, cannot be completed in the time frame normally provided.

Non-privileged responsive documents will be available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005 beginning on July 1, 2000. Please contact Pamela Lee or Nicole Vuilleux to make arrangements for the review of these documents. As discovery in this matter is ongoing, the United States reserves the right to supplement this response at a later time.

Request No. 26.

All documents reflecting, referring or relating to whether you have published, or are required to publish, the Illinois State Implementation Plan and the implementation plans of other states.

Response to Request No. 26.

The United States objects to this request to the extent it seeks publicly available information. In addition, the United States objects to this request as over broad and irrelevant in that it requests documents relating to State Implementation Plans of states other than the State of Illinois. Notwithstanding these objections, and the General Objections above, the United States

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has undertaken a search for such documents in files associated with the EPA's administration and enforcement of the Clean Air Act, which may contain documents responsive to this request. The location, review, numbering, copying, and privilege review of such documents is well underway but, due to the burdensome nature of this and related requests and the volume of responsive documents, cannot be completed in the time frame normally provided.

Non-privileged responsive documents will be available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005 beginning on July 1, 2000. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. As discovery in this matter is ongoing, the United States reserves the right to supplement this response at a later time.

Request No. 27.

All documents reflecting, referring or relating to publication of State Implementation Plans pursuant to § 110(h) of the Clean Air Act, 42 U.S.C. § 7410(h).

Response to Request No. 27.

See Response to Request No. 26.

Request No. 28.

All documents comprising the Illinois State Implementation Plan.

Response to Request No. 28.

The United States objects to this request to the extent it seeks publicly available information. Notwithstanding this objection, and the General Objections above, the United States has undertaken a search for such documents in files associated with the EPA's administration and enforcement of the Clean Air Act, which may contain documents responsive

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to this request. The location, review, numbering, copying, and privilege review of such documents is well underway but, due to the burdensome nature of this and related requests and the volume of responsive documents, cannot be completed in the time frame normally provided.

Non-privileged responsive documents will be available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005 beginning on July 1, 2000. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. As discovery in this matter is ongoing, the United States reserves the right to supplement this response at a later time.

Request No. 29.

All documents reflecting, referring or relating to predictions, estimates or determinations regarding the number of existing electrical utility plants or units that had or would become subject to New Source Performance Standards (NSPS) or Prevention of Significant Deterioration (PSD) requirements.

Response to Request No. 29.

Subject to, and without waiving its General Objections above, the United States objects to this request as vague and over broad. In addition, the United States objects to this request as irrelevant, as many of the documents requested are immaterial to the instant action. Further, the United States objects insofar as this request seeks documents beyond the possession, custody, or control of the United States Environmental Protection Agency. Additionally, the United States objects to this request to the extent it seeks documents protected from discovery by the deliberative process privilege, the attorney-client privilege or the work product doctrine.

Notwithstanding these objections, and the General Objections above, the United States has undertaken a search for such documents in files associated with the EPA's administration and

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enforcement of the Clean Air Act, which may contain documents responsive to this request. The location, review, numbering, copying, and privilege review of such documents is well underway but, due to the burdensome nature of this and related requests and the volume of responsive documents, cannot be completed in the time frame normally provided.

Non-privileged responsive documents will be available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005 beginning on July 1, 2000. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. As discovery in this matter is ongoing, the United States reserves the right to supplement this response at a later time.

Request No. 30.

All documents reflecting, referring or relating to your determination of the control technology that should, or you contend is required to be, installed at the Baldwin Station.

Response to Request No. 30.

Subject to, and without waiving its General Objections above, the United States objects to this request as vague and over broad. Further, the United States objects insofar as this request seeks documents beyond the possession, custody, or control of the United States Environmental Protection Agency. Additionally, the United States objects to this request to the extent it seeks documents protected from discovery by the deliberative process privilege, the attorney-client privilege or the work product doctrine.

Notwithstanding these objections, and the General Objections above, the United States has undertaken a search for such documents in files associated with the EPA's administration and enforcement of the Clean Air Act, which may contain documents responsive to this request. The

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location, review, numbering, copying, and privilege review of such documents is well underway but, due to the burdensome nature of this and related requests and the volume of responsive documents, cannot be completed in the time frame normally provided.

Non-privileged responsive documents will be available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005 beginning on July 1, 2000. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. As discovery in this matter is ongoing, the United States reserves the right to supplement this response at a later time.

Request No. 31.

All documents referred to, relied upon or identified in your Answers to Illinois Power's First Set of Interrogatories.

Response to Request No. 31.

Subject to, and without waiving its General Objections above, the United States objects to the extent this request calls for documents protected from discovery by the deliberative process privilege, the attorney-client privilege or the work product doctrine. Notwithstanding these objections, and the General Objections above, the United States has undertaken a search for such documents. Non-privileged responsive documents are available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents. Responsive documents are produced in the manner in which they were kept in the normal course of business and are organized according to the source of the documents. A listing of the source of such documents is provided in response to Request number 1, above.

Furthermore, as discovery in this matter is ongoing, the United States is continuing to collect and prepare for production additional document collections that may contain documents responsive to this request. The United States will begin to make such documents available on July 1, 2000.

Request No. 32.

All documents reflecting, referring or relating to the allegations in your Amended Complaint or Notice of Violation that have not been produced under a previous Request.

Response to Request No. 32.

The United States objects to this request as vague and over broad. The Amended Complaint in this matter contains over eighty-three paragraphs, extends for twenty-three pages. Notwithstanding this objection, and the General Objections above, the United States has undertaken a search for such documents in files associated with the EPA's administration and enforcement of the Clean Air Act, which may contain documents responsive to this request. The location, review, numbering, copying, and privilege review of such documents is well underway but, due to the burdensome nature of this and related requests and the volume of responsive documents, cannot be completed in the time frame normally provided.

Non-privileged responsive documents are available for review at the offices of the United States Department of Justice, 1425 New York Avenue, Washington D.C. 20005. Please contact Pamela Lee or Nicole Veilleux to make arrangements for the review of these documents.

Furthermore, as discovery in this matter is ongoing, the United States is continuing to collect and prepare for production additional document collections that may contain documents responsive to this request. The United States will begin to make such documents available on July 1, 2000.

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Respectfully submitted,

Assistant Attorney General
Environment and Natural Resources
Division



PAMELA R. LEE
NICOLE VEILLEUX

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Environmental Enforcement Section
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CERTIFICATE OF SERVICE

I hereby certify that on this the 6th day of June 2000, I caused true and correct copies of the foregoing Plaintiff United States' Responses and Objections to Defendant Illinois Power Company's First Request for Production of Documents to be served upon the following counsel of record in this matter by first-class U.S. Mail, postage prepaid:

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Nicole Veilleux
NICOLE VEILLEUX

EXHIBIT F
TO REPLY BRIEF IN SUPPORT
OF DEFENDANTS' MOTION TO
COMPEL PLAINTIFF'S
COMPLIANCE WITH RULES
33 AND 34 OF THE FEDERAL
RULES OF CIVIL PROCEDURE

(TO BE FILED IN TRADITIONAL
MANNER IF MOTION FOR
LEAVE IS GRANTED)

EXHIBIT G
TO REPLY BRIEF IN SUPPORT
OF DEFENDANTS' MOTION TO
COMPEL PLAINTIFF'S
COMPLIANCE WITH RULES
33 AND 34 OF THE FEDERAL
RULES OF CIVIL PROCEDURE

(TO BE FILED IN TRADITIONAL
MANNER IF MOTION FOR
LEAVE IS GRANTED)